

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

APR 12 2005

DAVID J. MALAND, CLERK

BY  
DEPUTY

KEITH MOTEN, #746717

§

VS.

§

CIVIL ACTION NO. 6:05cv3

KENNY GREEN, ET AL.

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Harry W. McKee, who issued a Report and Recommendation concluding that the lawsuit should be dismissed because the plaintiff failed to pay an initial partial filing fee as required by 28 U.S.C. § 1915. The plaintiff has filed objections.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the plaintiff thereto, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the plaintiff are without merit.

It is specifically noted that the plaintiff was ordered to pay an initial partial filing fee of \$4.16 on January 6, 2005. The plaintiff was given thirty days to pay the initial partial filing fee. He failed to pay it. The Report and Recommendation was filed on February 16, 2005. The plaintiff filed objections on February 25, 2005. He blamed the prison system for failing to


forward the initial partial filing fee to the Court. It is noted that the Court routinely promptly receives initial partial filing fees from inmates when they comply with instructions for having the fees forwarded to the Court. In response to the objections, the Court gave the plaintiff more time to pay the initial partial filing fee. He was given a new deadline of March 25, 2005. He was warned that the lawsuit may be dismissed if he failed to comply with the order. As of today, the plaintiff has neither complied with the order to pay the initial partial filing fee nor provided a legitimate excuse for such failure. The lawsuit should be dismissed. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the complaint is **DISMISSED** without prejudice for failure to obey an order of the Court and for failure to prosecute. Fed. R. Civ. P. 41(b); Rule 41, Local Rules for the Eastern District of Texas. All motions by either party not previously ruled on are hereby

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**DENIED.**

SIGNED this 12<sup>th</sup> day of April, 2005.

  
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MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE